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## POSITION ON PROPOSED LEGISLATION

**BILL: HB 873**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 2/23/2024**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 873 for the following reasons.

### **Unnecessary Legislation**

In 2022, the bipartisan JJRC recommended raising the minimum age to charge children with offenses in juvenile court for the vast majority of offenses, excluding crimes of violence and third-degree sex offense. Based on that, this body passed the Juvenile Justice Reform Act<sup>1</sup>, which went into effect on June 1, 2022. Last year HB814 amended the JJRA regarding children under 13 charged with automobile theft. As of November 1, 2024, DJS police officers are *required* to forward complaints alleging automobile theft to DJS, and DJS is *required* to authorize a CINS petition where a child under 13 is alleged to have committed a motor vehicle theft. As this change has only been in effect since November, we have no data on how many CINS petitions have been filed pursuant to this change. However, for each of the previous five years, no more than 2% of the complaints against children under age 13 have involved automobile theft.

Complaints Against Children Under 13: Auto Theft				
FY2020	FY2021	FY2022	FY2023	FY2024
.7%	2.1%	.4%	0%	1.7%

HB 873 would not confer Juvenile Court jurisdiction over all those cases; only over children who have previously been offered diversion for certain other crimes. All the enumerated charges already give the Juvenile Court jurisdiction over a child under 13 years of age. In other words, HB 873 would impact far fewer than the 2% of the children under 13 who are accused of automobile theft.

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<sup>1</sup> 2022 HB0459 <https://mgaleg.maryland.gov/2022RS/bills/hb/hb0459E.pdf>

## **HB873 will disrupt and delay the ability of children to get rehabilitative services.**

Part of the rationale for raising the age to thirteen was the fact that the vast majority of children under the age of thirteen are, at least initially, found incompetent to stand trial. A nationally published 2021 study found that the vast majority (82.6%) of children under the age of thirteen likely to be found incompetent to stand trial.<sup>2</sup> Those same children rated as having a poorer or more guarded prognosis for restoration of competency within a lawful time frame than older adolescents.<sup>3</sup> In Maryland, prior to the JJRA's enactment approximately two-thirds of children under 13 were initially found incompetent to stand trial.<sup>4</sup>

When children are found Incompetent to Stand Trial (IST) the only treatment available to them through prosecution is whatever treatment is necessary for them to attain competency. For children under the age of 13, much of the issue is simple developmental maturity, which may take far longer than the constitution allows.

It is critical to remember that being competent to stand trial is not a mere legal technicality, it is a requirement of both the United States Constitution and Maryland Declaration of Rights. These cases cannot be held open indefinitely while we wait for the child to grow and mature in the hope that they will attain competency. Children who have been found IST and who are dangerous cannot be held in a juvenile detention facility, only placed in a Facility for Children operated by the Department of Health—a limited resource. Children found IST can be supervised in the community, but only with conditions necessary to help them become competent because they have not yet been found involved in a delinquent act. Neither commitment nor supervision can last indefinitely, those conditions cannot continue for longer than reasonably necessary to determine whether they will become competent.<sup>5</sup>

When a child is prosecuted DJS only has jurisdiction over a child if they are found delinquent. There can be no delinquency finding unless and until a child is competent to stand trial. This means that if a child needs supervision, therapy, housing stability, or educational assistance, the Department

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<sup>2</sup> Patricia C. McCormick, Benjamin Thomas, Stephanie VanHorn, Rose Manguso & Susan Oehler (2021). Five-Year Trends in Juvenile Adjudicative Competency Evaluations: One State's Consideration of Developmental Immaturity, Age, and Psychopathology, *Journal of Forensic Psychology Research and Practice*, 21:1, 18-39, DOI: [10.1080/24732850.2020.1804306](https://doi.org/10.1080/24732850.2020.1804306), p. 33

<sup>3</sup> Id. At 34.

<sup>4</sup> MDH Juvenile Forensics: Pretrial Services. A presentation to the State Advisory Board for Juvenile Services, Dr. Michael T. Guilbault, PhD, October 20, 2020. [https://djs.maryland.gov/Documents/about/MDH-Juvenile-Forensics-Presentation-DJS-State-Advisory-Board\\_10-20-20.pdf](https://djs.maryland.gov/Documents/about/MDH-Juvenile-Forensics-Presentation-DJS-State-Advisory-Board_10-20-20.pdf)

<sup>5</sup> *Jackson v. Indiana*, 406 U.S. 715 (1972).

of Juvenile Services *cannot* provide those services unless and until the child has been deemed competent to stand trial. If the child is never deemed competent to stand trial, then they may never receive those services. On the other hand, if a child is referred to DJS and they file a Child In Need of Services (CINS) petition, rather than forward the case to the State's Attorney for prosecution, they can receive all the same services aimed at treating, guiding, and rehabilitating children. Children do not need to be competent to stand trial to receive services via a CINS petition. In short, prosecuting these young children delays and impedes the delivery of services.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 873**

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**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**

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